

A RESOLUTION

BY PUBLIC SAFETY/LEGAL ADMINISTRATION:

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO EXTEND A RETAINER AGREEMENT WITH THE LAW FIRM OF MORRIS, MANNING & MARTIN TO SERVE AS OUTSIDE COUNSEL TO THE CITY OF ATLANTA IN CONNECTION WITH THE CASES STYLED: VEOLIA WATER NORTH AMERICA OPERATING SERVICES LLC F/K/A U.S. FILTER OPERATING SERVICES, INC. V. CITY OF ATLANTA, CIVIL ACTION NO. 06-CV-1457; CITY OF ATLANTA V. VEOLIA WATER NORTH AMERICA OPERATING SERVICES, F/K/A U.S. FILTER OPERATING SERVICES, INC., CIVIL ACTION NO. 2006-CV-119510; CITY OF ATLANTA V. VEOLIA ENVIRONNEMENT, S.A. F/K/A VIVENDI ENVIRONNEMENT, S.A., CIVIL ACTION NO. 1:06-CV-1631; VEOLIA WATER NORTH AMERICA OPERATING SERVICES LLC F/K/A U.S. FILTER OPERATING SERVICES, INC. V. CITY OF ATLANTA, CIVIL ACTION NO. 2006-CV-118577; TO AUTHORIZE EXPENDITURES FOR THAT PURPOSE IN AN AMOUNT NOT TO EXCEED \$1.5 MILLION DOLLARS TO BE CHARGED TO AND PAID FROM FUND ACCOUNT AND CENTER NUMBER 2JO1 (WATER AND WASTE WATER) 524001 (PROFESSIONAL CONSULTANT SERVICES) Q30001 (DEPUTY COMMISSIONER, TREATMENT & COLLECTION).

WHEREAS, on August 1, 2002, the City and Veolia Water North America Operating Services LLC (Veolia), f/k/a U.S. filter Operating Services, Inc., executed a Long-Term Biosolids Management Services Agreement; and

WHEREAS, the City alleges that Veolia has consistently failed to fulfill its obligations under the Agreement in several ways, including, but not limited to failing to properly manage, operate, and maintain the facilities, failing to properly design and construct necessary Capital Improvements, and failing to provide the reports and documentation contemplated under the Agreement; and

WHEREAS, prior to filing suit, the City attempted to resolve Veolia's failure to perform under the Agreement and eventually provided written notification to Veolia on December 7, 2005 that it was in default under the Agreement and demanded that Veolia immediately come into compliance with the Agreement; and

WHEREAS, Veolia failed to take any corrective measures after receiving the notice, instead Veolia filed an action against the City in the United States District Court for the Northern District of Georgia styled as *Veolia Water North America Operating Services LLC f/k/a U.S. Filter Operating Services, Inc. v. City of Atlanta*, Civil Action No. 06CV1457, and on the same day filed the same or similar action in Fulton County Superior Court styled *Veolia Water North America Operating Services LLC F/K/A U.S. Filter Operating Services, Inc. v. City Of Atlanta*, Civil Action No. 2006-CV-118577.

WHEREAS, as a result of Veolia's failures under the Agreement, it is the City's position that it is owed at least \$34,930,723.29 in total damages by Veolia.

WHEREAS, in order to recover the damages incurred by the City, the City has filed two separate actions in Fulton County Superior Court styled *City Of Atlanta v. Veolia Water North America Operating Services, F/K/A U.S. Filter Operating Services, Inc.*, Civil Action No. 2006-CV-119510; and, *City Of Atlanta v. Veolia Environnement, S.A. F/K/A Vivendi Environnement, S.A.*, Civil Action No. 1:06-CV-1631; the later action being removed to the United States District Court for the Northern District of Georgia.

WHEREAS, the City Attorney determined that, due to the particularized expertise and resources needed to properly advance the interests of the City of Atlanta and litigate these matters, outside counsel would be necessary; and

WHEREAS, given the sensitive nature of this matter, the required expertise and manpower, and the potential level of financial exposure, the City Attorney determined it appropriate to engage the legal services of the law firm of Morris, Manning & Martin as outside counsel as provided in Section 2-407 of the City of Atlanta Code of Ordinances; and

WHEREAS, Morris, Manning & Martin has obtained national prominence for excellence in several fields, including environmental and litigation law; and

WHEREAS, the City Attorney has determined that the law firm of Morris, Manning & Martin has both the specialized practice skills as well as the considerable legal resources necessary to augment the expertise in the City Law Department; and

THE CITY COUNCIL OF THE CITY OF ATLANTA, HEREBY RESOLVES that the City Attorney be and is authorized to extend its retention agreement with the law firm of Morris, Manning & Martin to serve as outside counsel to the City Attorney on all legal matters related to *Veolia Water North America Operating Services LLC f/k/a U.S. Filter Operating Services, Inc. v. City of Atlanta*, Civil Action No. 06-CV-1457, *City of Atlanta v. Veolia Water North America Operating Services f/k/a U.S. Filter Operating Services, Inc.*, Civil Action No. 2006 CV 119510, *City of Atlanta v. Veolia Environnement, S.A., f/k/a Vivendi Environment, S.A.*, Civil Action No. 1:06-CV-1631, and *Veolia Water North America Operating Services LLC f/k/a U.S. Filter Operating Services, Inc.*, Civil Action File No. 2006-CV-18577.

BE IT FURTHER RESOLVED that the City Attorney be and is hereby authorized to incur legal fees, costs and expense related to this matter in an amount not to exceed \$1.5 Million Dollars.

BE IT FINALLY RESOLVED that the Chief Financial Officer is hereby authorized to remit payment of all legal fees, expenses and costs due for legal services rendered by the law firm of Morris, Manning & Martin in connection with the foregoing matters, once approved for payment by the City Attorney, in an amount not to exceed \$1.5 Million Dollars to be paid from Fund Account and Center Number 2J01 (Water And Waste

Water) 524001 (Professional Consultant Services) Q30001(Deputy Commissioner, Treatment & Collection).